IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.46186 of 2002

1.L.Kannappan
2.L.Thirunavukarasu ... Petitioners

Vs.

1.The Government of Tamil Nadu,
rep.by its Secretary to Government,
Revenue Department,
Fort St.George, Chennai-9.

2.The Principal Commissioner &
Commissioner of Land Reforms,
Chepauk, Chennai-5.

3.The Assistant Commissioner/
Competent Authority,
Urban Land Ceiling,
(Tambaram), 61, Sannadhi Street,
Adambakkam, Chennai-88. ... Respondents

* * *

The Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus as stated therein.

* * *

For petitioner : M/s.V.Ramesh
For respondents : Mr.C.Thirumaran, G.A.

* * *

O R D E R

The Writ Petition has been filed praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondents, especially, the order of the third respondent, dated 04.03.1983, vide Ref.No.Rc.1657/81D and notice under Section 11(5), dated 27.10.1987, vide Ref.No.Rc.D/1657/81 in respect of land in Survey No. 43/2A of pulikorudu village, and quash the same and further direct the respondents to treat the land as falling outside the provisions of the Act 24/78 by virtue of Section 4 of Act 20 of 1999.

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2.Heard the learned counsel for the petitioner as well as for the respondents.

3.The brief facts of the case, as stated by the petitioner, are as follows:-

The writ petition has been filed by P.Lingan, father of the petitioners, on behalf of the minor sons. It is stated that the petitioners had purchased agricultural lands in Survey No.43/2A of Pulikorudu Village, Tambaram Taluk, by two sale deeds, dated 30.06.1999 and 01.02.2001, vide Document Nos.3225/99 and 428/2001, respectively. The total extent covered under these documents is about 92 cents. The land was purchased as agricultural land from one B.Jothi. The properties were originally held by A.R.Devasagayam. The said A.R.Devasagayam, had sold the property to P.Maniammal and P.Ravichandran, by a sale deed, dated 03.09.1980. P.Maniammal and P.Ravichandran had sold the property to B.Jothi and K.Saraswathi, by a sale deed, dated 27.04.1983. By the above said sale deeds, B.Jothi and K.Saraswathi became entitled to the property. K.Saraswathi had sold her 1/2 share to B.Jothi, by a sale deed, dated 24.06.1999. In all the said sale deeds, the property in question is referred to as agricultural property. P.Maniammal and P.Ravichandran had put up a shed in the property after the purchase of the land. Except the portion in which the shed was put up, the remaining extent was used for agricultural purposes by the petitioners and their predecessor-in-title.

4.It is further stated that during the month of October,2002, the petitioners had approached the revenue officials for obtaining patta in their name. The application for patta was refused to be entertained by the Village Administrative Officer on the ground that the land had been acquired under the Tamil Nadu Urban Land (Ceiling and Regulation) Act,1978, in the name of A.R.Devasagayam. The petitioner had applied for certified copies of the orders passed under Sections 9 to 11 of the Act and the certified copies of orders passed under Section 9 (5) and 11(5) were furnished to the petitioners, recently. The orders of acquisition are challenged under the present writ petition.

5.It is submitted that the property in question being agricultural lands cannot be acquired and the same are excluded from the Provisions of the Act, under Sections 3(o) and 3(p). The fact that the land was agricultural in nature has been admitted in the recitals contained in the sale deeds and in the receipt for payment of Kists and other revenue records. Further, the order of the competent authority, does not refer to any inspection of lands or any enquiry conducted by him. The land in Survey No.258 of Tambaram Village was excluded from acquisition on the ground that it is agricultural land. The land in other Survey Numbers are found to contain high tension wire, whereas, with regard to the character of

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the land in Survey No.43/2A, which is held by the petitioners, the order is silent. Nothing is mentioned about the character of the land in Survey No.43/2A. However, this land is included in the order of the third respondent, as if it is an urban land. Thus, it is clear that the third respondent had neither inspected the land nor made any enquiry.

6.It is further submitted that from a reading of the order passed under Section 9(5) of the Act, it is seen that there was no personal hearing afforded to the land owner or his adopted son . It is also seen that no reference has been made with regard to the inspection of the land before the orders were passed by the third respondent. Non-inspection of the land by the competent authority is a serious infirmity which vitiates the order. The draft statement under Section 9(1) and notice under Section 9(4) were addressed to the dead person A.R.Devasagayam and the order under Section 9(5) has been addressed to Isaac Samuel. The family details of Isaac Samuel who is the adopted son of A.R.Devasagayam has not been ascertained. Only 500 Sq.mtrs was conferred as family entitlement and the rest of the lands have been acquired which is contrary to law. Since the draft statement under Section 9(1) and the notice under Section 9(4) were addressed to the deceased person, the said notice was returned unserved and it appears that they have been served on the land owner's son. The land owner's son, namely, Isaac Samuel had replied during the month of April, 1982, stating that his father had sold the lands and later had expired. Meanwhile, it appears that one of the purchasers, namely, V.K.Janakammal and S.D.Krishna Reddy who had purchased about 5350 Sq.mtrs at Tambaram Village and 23,750 Sq.mtrs at Pulikorudu Village had applied for exemption and the same was rejected by the Government by a letter, dated 14.12.1982. It is only under these circumstances, the excess vacant land had been acquired without application of mind and without any independent reasoning or discussion in the order passed under Section 9(5) of the Act. It is seen from the order that the proceedings were against a dead person and that too after the lands had been sold to third parties. Further, it is seen that the lands were agricultural lands at the time when it was sold and continued to be so even thereafter. When that being the position, the third respondent ought to have issued a notice to the petitioners, atleast after the third respondent had been informed by the petitioners that their father had sold the lands and later, had died. The question of laches or delay in agitating the matter will not arise as the petitioners were not aware of the proceedings till the month of October,2002.

7.The learned counsel appearing on behalf of the petitioners had pointed out that in the proceedings, dated 04.03.1983, the Assistant Commissioner (ULT), Tambaram, had issued the notice to Isaac Samuel, son of A.R.Devasagayam. In the said order, it has been stated that the the draft statement sent by R.P.A.D was returned undelivered, by

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the postal authorities, stating 'Party Died'. When the draft statement was sent through special messenger, the adopted son of A.R.Devasagayam, had received the same, on 25.02.1982. He has stated in his letter, dated Nil, received on 13.04.1982, that he is the legal heir of A.R.Devasagayam and stated that his father has sold out certain lands and thereafter, he had expired. He has also stated that he would produce the documents and other details. It has also been stated that V.K.Janakammal and S.D.Krishna Reddy have purchased the lands, measuring 5350 Sq.mtrs., in Tambaram Village and 23750 Sq.mtrs., in Pulikorudu Village during the year 1980 and they had applied for exemption. The government in their letter No.2022 Revenue, dated 14.12.1982, and by a letter No.72239/R282-1, dated 09.12.1982, have ordered acquisition of the above property and rejected the exemption application stating the above facts, and the Assistant Commissioner (ULT), Tambaram, had ordered acquisition of the lands in question. It is further seen from form VII notice, regarding surrender or delivery of possession of excess vacant land acquired under Sub-Section (3) of Section 11, it is addressed to Isaac Samuel adopted son of Late A.R.Devasagayam. Further, from the village records, it is seen that for fasali 1385 to 1398, the lands have been described as agricultural lands and that certain crops have been cultivated. Further, from the adangal extract for fasali 1411 and 1412, dated 27.11.2002, it is seen that there has been cultivation of the lands in question in the name of P.Lingan.

8. Further, the learned counsel appearing on behalf of the petitioners has relied on the following decisions :-

8.1. In M/s.Vijay Foundation (P) Ltd. rep.by its Director, R.Thiagarajan Vs The Principal Commissioner and Commissioner of Land Reforms, Chepauk, Chennai, reported in 2006-4-L.W,159, a learned Judge of this Court, while dealing with the action initiated by the respondents under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, in view of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act (Act 20 of 1999), has held that the respondents had initiated acquisition proceedings against the person who was not the owner of the lands. As the mandatory conditions mentioned in Sections 7 to 12 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, were not followed by the respondents, the alleged possession taken by the respondents was vitiated. Based on the proceedings initiated against the wrong person, the lands of the petitioner cannot be acquired by the respondents. Since the possession of the land is with the petitioner ever since the date of purchase and as the the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, was repealed on 16.06.1999, it was not open to the respondents to proceed against the petitioner.

8.2. In Sosamma Thampy Vs. The Assistant Commissioner (ULT)-cum-Competent Authority (ULC) and others reported in (2006) 2 M.L.J. 664 , M/s.Anees Leathers Manufacturers rep.by its proprietor Mr.Anees

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Ahamed Vs The Government of Tamil Nadu rep.by its Secretary, Revenue Department, Fort St.George, Chennai and others, reported in 2006-3-L.W.437, and Jayaseelan & Ratnaseelan Vs The Government of Tamil Nadu rep.by its Secretary, Revenue Department, Fort St.George, Chennai and others reported in 2006-3-L.W.440, this Court while dealing with the effect of the provisions of the Tamil Nadu Urban Land Ceiling Repeal Act (Act 20 of 1999) on the land acquisition proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation), Act 1978, has held that all such proceedings initiated under the Act of 1978, would abate on the coming into force of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act 1999, if the possession of the land had not been taken by the authorities concerned prior to the repeal and if due compensation has not been paid to the petitioners.

9.Based on the above decisions and on the submissions made by the learned counsels appearing for the petitioners as well as for the respondents and on a perusal of the records available before this Court, it is clear that the land acquisition proceedings initiated by the respondents and challenged before this Court cannot be sustained in view of the subsequent coming into force of the Repeal Act (Act 20 of 1999). In such circumstances, the proceedings initiated against the lands in question stands abated in view of Section 4 of Act 20 of 1999, and therefore, the writ petition stands allowed. No costs.

Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1.The Secretary to Government,
Government of Tamil Nadu,
Revenue Department,
Fort St.George, Chennai-9.

2.The Principal Commissioner &
Commissioner of Land Reforms,
Chepauk, Chennai-5.

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3.The Assistant Commissioner/
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Pre-delivery order in
WRIT PETITION No.46186 of 2002

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